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April 28, 1998

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Chairman William Kennard
Federal Communications Commission
1919 M Street N.W.
Washington, DC 20554

Re: MM Docket No. 97-234
GC Docket No. 92-52
General Docket No. 90-264

ORIGINAL

Dear Chairman Kennard:

The Hoke County School system is school system serving the educational needs of local North Carolinians and their families in our community. We are deeply concerned about the FCC's consideration of a proposal to auction ITFS spectrum. We believe the FCC should use its authority to ensure that ITFS licenses are not awarded by auction.

Over three years ago, we joined with dozens of community colleges and secondary educational institutions (and subsequently with UNC) to form a telecommunications partnership with Wireless One of North Carolina, L.L.C. to build a statewide wireless video/data telecommunications network. Our educational/commercial partnership is unique in the telecommunications industry.

After carefully engineering a wide area system that would bring ITFS service to rural and urban North Carolinians alike, WONC assisted dozens of educational institutions in filing applications with the FCC for licenses for the hundred plus ITFS channel groups that would provide the backbone for the statewide network. The ITFS stations would allow educators to provide distance learning opportunities to the citizens of North Carolina, while permitting the educational institutions to lease excess capacity to WONC to develop a statewide commercial wireless cable system. In October of 1995, when the FCC opened its ITFS filing window, over 100 applications for new ITFS stations in North Carolina were filed by community colleges and secondary schools as well as by numerous affiliates of the University of North Carolina. The applications were expensive and time consuming to prepare and proposed detailed technical operations. Most of these applications are still pending at the FCC. Now, 2 ½ years later, to consider dismissing these pending ITFS applications and auctioning the ITFS spectrum to the highest bidder would be a tremendous disservice to the state's educational institutions and the citizens they seek to serve.

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By way of background, the Balanced Budget Act amended Section 309(j) of the Communications Act and extended the FCC's auction authority to include a variety of radio services not previously subject to auctions. However, Congress specifically exempted the licensing of certain radio services including "non-commercial educational broadcast stations" and "public broadcast stations". Although ITFS stations have all the characteristics of non-commercial educational broadcast stations (i.e., they can only be licensed to an accredited institution or non-profit educational entity, there is no license application fee or annual regulatory fee and the stations are used primarily to serve the educational needs of the community), because the FCC technically qualified ITFS as a "non-broadcast service" for certain purposes, the FCC is now considering the potential dismissal of all of the pending ITFS applications and auctioning the spectrum. This would pit educators against one another in a bizarre bidding process comprised entirely of non-profit institutions.

The Omnibus Budget Reconciliation Act of 1993 (Budget Act) specifically recognized ITFS as a unique service that should be exempt from auctions because its principal mandate is the provision of educational television programming to schools and institutions. There is nothing in the legislative history of the Balanced Budget Act that indicates Congress meant to change its position on the inappropriateness of applying auctions to ITFS as it had set out in the Budget Act four years before. Rather, it appears that because ITFS has all the characteristics of a "non-commercial broadcast" service Congress assumed it to be covered under the exemption from auctions accorded to non-commercial broadcast services in the Balanced Budget Act.

Because lotteries were not used to license ITFS, the FCC still has the authority to use the existing "point-system" to award mutually exclusive ITFS licenses. If the FCC changes licensing procedures midstream, three years of work, technical planning and the hundreds of thousands of dollars spent developing the North Carolina nationwide network will be wasted. Additionally, the delay in the FCC's licensing of ITFS via auctions can be expected to be years since the FCC has not yet developed any rules for educational/non-profit auctions. It has already been 2 ½ years since our ITFS application was filed - we believe immediate FCC action in processing these applications using the "point system" is the best way to serve the public interest.

Thank you for your attention to this matter which is of critical importance to educators nationwide.

Sincerely,



Don D. Steed
Superintendent

C: Susan Fox